No. 12,781

IN THE

United States Court of Appeals

For the Ninth Circuit

THOMAS HENRY BURGTORF,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLEE.

FRANK J. HENNESSY,
United States Attorney,
JOSEPH KARESH,
Assistant United States Attorney,
Post Office Building, San Francisco 1, California,
Attorneys for Appellee.

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JURISDICTIONAL STATEMENT.

This is an appeal from a judgment of conviction of the United States District Court for the Northern District of California, convicting the appellant, after a trial without a jury, of a violation of Section 12 of the Selective Service Act of 1948, Title 50 U.S.C. War Appendix, Section 462(a). Jurisdiction to review the judgment of conviction is conferred upon this Honorable Court by the provisions of Title 28 U.S.C. Section 1291.

STATEMENT OF THE CASE.

The appellant was indicted in the United States District Court for the Northern District of California for a violation of Section 12 of the Selective Service Act of 1948, refusal to submit to induction and be inducted into the Armed Forces of the United States. After a trial, without a jury, the appellant was adjudged guilty and sentenced to imprisonment for a period of five years. (Tr. 169.) The Grand Jury charged the appellant in the indictment, which it returned against him, as follows:

> "THOMAS HENRY BURGTORF,
>
> defendant herein, being a male citizen of the United States of the age of 23 years at the time fixed for registration, residing in the United States and under the duty to present himself for and submit to registration under the provision of Public Law 759 of the 80th Congress, approved June 24, 1948, known as the 'Selective Service Act of 1948', and thereafter to comply with the rules and regulations of said Act, and having, in pursuance of said Act and the rules and regulations made pursuant thereto, become a registrant of Local Board No. 58 of the Selective Service System in the City and County of San Mateo, State of California, which said Local Board No. 58 was duly created, appointed and acting for the area of which the said defendant is a registrant, did, on or about the 28th day of September, 1950, in the City and County of San Francisco, State and Northern District of California knowingly fail to perform such duty, in that he, the said defendant, having theretofore been duly classified in

Class 1-A and having theretofore been duly ordered by his said Local Board No. 58 to report at San Francisco, California on the 28th day of September, 1950, for induction into the Armed Forces of the United States, and having so reported, did then and there knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States, as provided in the said Selective Service Act of 1948, and the rules and regulations made pursuant thereto." (Tr. 159-160.)

THE SELECTIVE SERVICE ACT OF 1948.

Section 12 of the Selective Service Act of 1948, Title 50 U.S.C. War Appendix, Section 462(a), reads in pertinent part as follows:

> "* * * any person * * * who shall knowingly fail or neglect or refuse to perform any duty required of him under * * * rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district Court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine not more than $10,000, or by both such fine and imprisonment * * *. No person shall be tried by court martial in any case arising under this title unless such person has actually been inducted for the training and service prescribed under this title * * * ."

Section 4 of the Selective Service Act of 1948, Title 50 U.S.C. War Appendix, Section 454, reads in pertinent part as follows:

"(a) Except as otherwise provided in this title, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of nineteen and twenty-six, the time fixed for registration * * *, shall be liable for training and service in the Armed Forces of the United States."

PERTINENT REGULATIONS.

Part 1622.5 Selective Service Regulations reads as follows:

"Class I-A: Available for Military Service—(a) In Class I-A shall be placed every registrant who is not eligible for classification in Class I-C* and has failed to establish to the satisfaction of the local board, subject to appeal hereinafter provided, that he is eligible for classification in another class."

The other applicable regulations are set forth in the Appendix to this brief.

FACTS OF THE CASE.

The appellant, a citizen of the United States, born March 28, 1925, a registrant of Local Board No. 58, San Mateo, California, filed his completed questionnaire with the said Board on September 28, 1948

*"Class I-C Member of the Armed Forces of the United States, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service, and certain registrants separated therefrom." Part 1622.7, Selective Service Regulations.

(U. S. Exh. 2, Tr. 7-10). In the questionnaire, in which appellant requested that he be classified in Class IV-D, but made no claim that he was a conscientious objector, he stated, among other things, that he was single, that he was a minister of religion, regularly serving as such, a minister of Jehovah's Witnesses since June 10, 1942, having been formally ordained on that date by an ecclesiastical official, a Watchtower representative. No documents were attached to the questionnaire filed therewith to support the claim made by the appellant that he was a minister. The appellant also indicated in his questionnaire that he was employed 40 hours a week at an average wage of $1.37 an hour by a manufacturer of conveyor equipment, that his work consisted of punching axle holes for conveyor equipment, and that he had entered upon such employment in August of 1947. According to the record of entries of the actions of the Local Board as reflected on the back of the questionnaire, appellant on October 1, 1948, was classified by the said Board in Class I-A by a vote of four to nothing, and on October 8, 1948, a notice of such classification, Form 110, was mailed to him; on October 25, 1948, appellant was mailed an order to report for Armed Forces physical examination (Tr. 11-12), reported for his physical examination as ordered on November 5, 1948 (U. S. Exh. 3), was found acceptable for service in the Armed Forces, and on November 12, 1948, was mailed a notice to that effect, N.M.E. Form 62 (U. S. Exh. 4, Tr. 13-14). On November 10, 1948, some 20 days after time to appeal had expired, the Local Board

received from the appellant a letter requesting an appeal from the I-A Classification accorded him by the said Board, to which were attached two supporting documents (U. S. Exh. 4, Tr. 12-13). Appellant claimed he did not file his appeal within the period required, ten days from the date the notice of classification was mailed him, because he had never received the said notice, although the records of the Board reflect that the notice of classification was never returned to it by the postmaster (Tr. 12-13). It is undisputed that the appellant received all other mail addressed to him by his Local Board. It is also undisputed that the appellant made no timely request for a personal appearance before the Local Board, either orally or in writing. Thereafter, according to the testimony of the clerk, it was suggested by her to the appellant that he present himself before the Local Board, such suggestion being coupled with an admonition by her that such an appearance would not necessarily constitute a reopening of his case (Tr. 70-71). On December 9, 1948, appellant did present himself and the following proceedings occurred, as indicated by the written record which is a part of appellant's Selective Service file:

> "Mr. Burgtorf appeared before the Board and was advised by the Board that since he had not appealed within his appeal period they were not reopening his case but would let him present any information he wanted. He stated he was a student and also a minister of religion. Also that in the event he was not considered a minister he had religious objections, he believes in neutralism in

> politics and religion. Objects to taking part in war of any kind but that is not what he wants, he is pressing for ministerial deferment. Board quoted section of regulations governing ministers and said they did not believe that any information he had presented would warrant reopening his classification." (U. S. Exh. 5, Tr. 15-16.)

The records of the Board also reflect that on that date, by a vote of four to nothing, its members refused to reopen appellant's case and by letter dated December 10, 1948 advised the appellant of such action and also advised him that he was not entitled to take an appeal because his letter of appeal had not been timely filed. (T. 16-17.) On January 5, 1949 appellant was sent an order to report for induction on January 17, 1949 (U. S. Exh. 6, Tr. 18), appeared at the induction station and refused to submit to induction. (U. S. Exh. 7, Tr. 19-20.) On January 18, 1949 the Local Board advised the appellant that at the request of State Headquarters of Selective Service[1] he would be permitted to appeal his I-A Classification, and in addition was granted five days within which to file any supplemental material for forwarding to the Board of Appeal (U. S. Exh. 8, Tr. 21-22), and the United States Attorney was advised of such action. (Tr. 26.) The appellant submitted certain supplementary documents which, together with his original appeal letter (U. S. Exh. 10, Tr. 25) and his complete file, were forwarded to the appropriate Board of Ap-

[1]The request to the Board was by letter. (U. S. Exh. 9, Tr. 22-24.) For purpose of convenience the letter is also set forth in full in the Appendix to this Brief.

peal on January 25, 1949. (Tr. 26.) Thereafter and on March 10, 1949 the Appeal Board, by a vote of four to nothing, sustained the action of the Local Board, and on April 8, 1949 the appellant was mailed appropriate notice advising him of the decision of the Appeal Board. (Tr. 30-31.)

No further action was taken with reference to the appellant until August 15, 1950 when he was sent an order to report for another Armed Forces physical examination on August 29, 1950, with which order he complied. (Tr. 34.) Appellant likewise passed this examination and a notice to this effect was mailed to him on September 5, 1950. (Tr. 34-35.) Once more, and on September 28, 1950, in compliance with another order to report for induction mailed him September 15, 1950 (U. S. Exh. 18, Tr. 35-36), appellant appeared at the induction station in San Francisco and refused to submit himself to induction and be inducted into the Armed Forces of the United States. (Tr. 60-64, 77-80, 81-83.) It was this refusal which resulted in his indictment and conviction. From this judgment of conviction appellant now appeals to this Honorable Court. (Tr. 170.)

CONTENTIONS OF APPELLANT.

The appellant contends in substance that

(1) he was denied due process before his Local Draft Board,

and that

(2) he was arbitrarily classified in Class I-A, and accordingly he was under no obligation to submit to induction since the induction order was based on a void classification and the evidence before the trial Court, therefore, was insufficient to sustain his conviction.

ARGUMENT.

Appellee begins this argument by reference to the case of *United States v. Jones,* 176 F. (2d) 278, wherein this Honorable Court said, at page 282:

> "* * *. At the same time, presumption of legality attaches to the act of a public officer. As Chief Justice Marshall put it in an old case, an act done by an officer authorized by law to perform it 'carries with it prima facie evidence that it is within his power' and 'he who alleges that an officer intrusted with an important duty has violated his instructions must show it'. Delassus v. United States, 1835, 9 Peters 117, 134, 9 L. Ed. 71. And see, United States v. Coe, 1898, 170 U. S. 681, 696-697, 18 S. Ct. 745, 42 L. Ed. 1195; Lamport Mfg. Supply Co. v. United States, 1928, 65 Ct. Cl. 579, 610."

I. THE ALLEGED DENIAL OF DUE PROCESS.

Basis of the allegation by the appellant that he was denied due process by his Local Draft Board is a claimed deprivation to him of a personal appearance, with the attendant reopening of his classification.

Does the claimed deprivation of a personal appearance void all subsequent actions of the Local Board and the Appeal Board, as was held in *United States v. Laier,* (D.C.N.D. Cal.), 52 F. Supp. 392, cited by appellant in his opening brief? Appellee feels no need to discuss this proposition, conceding it arguendo, except to point out that certainly an Appeal Board finding would cure any lack of due process before the Local Board, since the evidence is overwhelming, as the trial Court found, that there was no deprivation of a personal appearance in our case at bar. (Tr. 154.)

The regulations require that a request for personal appearance be made in writing. (See Appendix, Part 624.1, Selective Service Regulations.) No such written request was made by the appellant.

The regulations further require that a request for personal appearance, after classification, be made in writing within ten days after the mailing of written notice of such classification. (See Appendix, Part 624.1, Selective Service Regulations.) No such timely request was made. Appellant denies the receipt of the original I-A Classification Card, SSS Form 110,[2] but the Court found otherwise. In this connection, in adjudging the appellant guilty, the Court stated:

> "The evidence has been presented extensively, the argument is concluded. I believe the due

[2]It is significant that the I-A Card contained instructions with reference to the time when an appeal must be taken and the manner and period within which a request for personal appearance must be made.

> process clause has been fully met and complied with, and the evidence is abundant, not only from the clerical records, but from the oral testimony, that all of the procedural steps and technique were carried out, and that notice was received by the defendant. It might well be, and I think it is probably inferable, that the matter of the defendant's testimony that he did not receive any notice is a pure afterthought." (Tr. 154.)

It should be noted that the entry on the back of the questionnaire reflected the mailing of the notice of classification and such notice was not returned by the Postmaster to the Local Board. Significant it is, that all other orders and notices mailed appellant were received by him. Appellant argues that the clerk had no independent recollection of the mailing of the I-A Card and, accordingly, this is conclusive evidence that such notice was not mailed or that the appellant did not receive the same. To require independent knowledge of the mailing of each notice in order to bind a registrant would be to create a situation making the enforcement of the Selective Service Act virtually impossible. Appellee wonders, therefore, whether appellant is seriously pressing this contention. The law with reference to this subject is well settled. Here, entries of the mailing of notices are kept in the regular course of business; the custodian of those records is certainly competent to testify concerning their mailing, and the foundation is sufficient for the admissibility of such testimony, as well as for the introduction of copies of documents which the record en-

tries show were mailed and about which there is no dispute. But, assuming that the appellant's testimony is believed that he did not receive the original I-A Card mailed him on October 8, 1948 and accordingly he could not file the request for personal appearance within the ten-day period required, the fact remains that he did personally receive from the clerk on November 5, 1948 a duplicate of this original card (Tr. 105-107) and failed to file a written request for personal appearance within ten days from that latter date. Furthermore, it is difficult to understand why appellant, when he received his notice for physical examination mailed him on or about October 25, 1948 and was thereby put on notice that he had been classified in Class I-A, did not consult the clerk of the Board with reference to his case until November 5, 1948. (Tr. 105-106.) Appellant pleads ignorance of Selective Service Regulations (Tr. 106) even though such ignorance is no excuse, but appellee questions such a claim in view of the testimony of appellant, under cross-examination, disclosing a present and long-time familiarity with the Selective Service Act, its rules and regulations, and the case law applicable thereto. (Tr. 97-100.) Be this as it may, the finding of the Court, hereinabove set out, is supported by substantial evidence and should not be disturbed. The appellant was not entitled to a personal appearance or to have his classification considered anew by the Local Board.[3] He was not denied due process by his

[3]See Appendix to this Brief, Parts 625.1 and 625.2, Selective Service Regulations.

Local Draft Board. As a matter of fact, the appellant was accorded greater rights than due process demanded, when prosecution for his original violation of the statute was dropped and he was permitted to take an untimely appeal[4] from his I-A Classification. Such consideration would never have been shown him[5] had the Government authorities anticipated his future course of conduct, and known that, under cross-examination, the appellant would have conducted himself and spoken in the arrogant manner in which he did, as the following will indicate:

"Q. (By Mr. Karesh) Now, you're still not willing to be inducted into the Army?

A. That is for sure.

Q. You know the consequences of your act?

A. I am fully aware of the consequences.

Q. You said something about your being a traitor to the Almighty if you obey that order?

A. That is correct.

Q. You still stand by that?

A. I stand on that 100 per cent.

Q. What do you mean, 'a traitor to the Almighty'?

A. I don't think the Almighty God has any part in these wars by selfish men of this world who hold life a cheap garment, so my life would

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[4]See Appendix to this Brief, Part 1626.2, Selective Service Regulations.

[5]In this regard in his closing argument the prosecutor said, among other things:

"May it please your Honor, I frankly believe and am firmly convinced that the office of United States Attorney owes to the Selective Service Board an apology, because as the record will show, it was at our request that this Board very graciously permitted this case to go to the Appeal Board." (Tr. 143.)

be lost with only selfish attainments. It would be a disgrace to our Almighty, therefore, even for a Chaplain in the Army putting his blessing on a set-up like that.

Q. You don't approve of Chaplains, either?

A. No.

Q. What do you say about them?

A. It is a disgrace to the Almighty to take his name in vain by applying it to something that is doomed to destruction in the old world system of things.

Q. You live here in America and enjoy living here?

A. Well, actually I am a free moral agent created by the Almighty, and my conscience is in accordance with the will of God. No external authority has any right to come in between. I can only say like the Apostle Paul, no authority nor government nor anything else shall separate us from the love of God and Christ.

Q. You consider, do you, Chaplains traitors to God, is that right?

A. I certainly do." (Tr. 120-121.)

In his opening brief, at page 7, appellant states, among other things: "Certainly nothing *appears* more unfair than the procedure followed here. It was a sham and a mockery and a blatant denial of due process under the authorities cited." In view of the record herein, such a statement can be called nothing more than a distortion of the facts and the law applicable thereto, for that record is a complete answer to the unwarranted and unsupported claim of an alleged deprivation of due process.

II. THE ALLEGED ARBITRARY ACTIONS OF THE LOCAL AND APPEAL BOARDS.

Appellant contends that in classifying him in Class I-A and in refusing to classify him as a minister of religion in Class IV-D (exemption from service of any kind, either military or civil), his Local Board and his Appeal Board acted arbitrarily and capriciously, inasmuch as there was no evidence to sustain such actions.

In *Estep v. United States,* 327 U.S. 114, 122, 123, the Supreme Court declared:

> "* * *. The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local board was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

In its decision in the *Estep* case, the Supreme Court cited the case of *Goff v. United States,* 135 F. (2d) 610, 612. In this latter case, the United States Court of Appeals for the Fourth Circuit said:

> "* * *. But as we said in the case of Adrian Elwood Baxley v. United States, 4 Cir., 134 F. 2d 998, this does not mean that the court in a

criminal proceeding may review the action of the board. *That action is to be taken as final, notwithstanding errors of fact or law, so long as the board's jurisdiction is not transcended and its action is not so arbitrary and unreasonable as to amount to a denial of constitutional right.* Nothing in the evidence offered in the court below tended to show anything of this sort. Adrian Elwood Baxley v. United States, supra; United States v. Kauten, 2 Cir., 133 F. 2d 703; Seele v. United States, 8 Cir., 133 F. 2d 1015; Rase v. United States, 6 Cir., 129 F. 2d 204; Johnson v. United States, 8 Cir., 126 F. 2d 242; United States v. Pace, D.C., 46 F. Supp. 316; United States v. DiLorenzo, D.C., 45 F. Supp. 590; United States v. Newman, D.C. 44 F. Supp. 817." (Emphasis supplied.)

A reading of the pertinent Selective Service Regulations (see Appendix, Part 1622.19), will show that the Local Board and the Appeal Board were well within their rights in denying appellant a IV-D Classification and finding him available for military service by classifying him in Class I-A. Appellant was not preaching regularly but only incidentally, his regular occupation being that of a hole puncher of conveyor equipment, a position which he occupied continuously from the time he filled out his Selective Service questionnaire until the time he wilfully disobeyed the Selective Service Act by refusing a second time to submit to induction on September 28, 1950. (Tr. 96.) In his opening brief, at page 8, appellant asserts that the "decision of the

Draft Board appears to rest more upon prejudice than upon evidentiary facts". Here is another statement completely unsupported by the record. Appellant claims that he became a minister at the age of 17 years, a statement, which in itself would give the Draft Board justifiable cause to disregard his claim for exemption. What, in effect, appellant is seeking to do is to have the Courts hold that mere membership in Jehovah's Witnesses is a fact sufficient in itself to warrant an automatic classification of Class IV-D. That the Congress never intended such a result may, of course, be seen by reference to the Act and the rules and regulations promulgated thereunder. A member of Jehovah's Witnesses is entitled to no less, or to no greater consideration than that accorded a member of any other religious group. That such fair consideration is given them can not be questioned, except, for example, by a person, like the appellant, who, having received even greater consideration than that to which he is entitled, nonetheless, in order to justify his flagrant and wilful violation of the statute, loudly proclaimed that he was abused by his Local Draft Board and by his Appeal Board. Of all this it may be finally said that with the evidence before it the Local Board had only one decision which it could properly make, and that was its decision to classify the appellant in Class I-A, a decision which, of course, was likewise properly affirmed by the Appeal Board.

SUMMARY.

The appellant was not deprived of any of his rights before his Local Draft Board and, as a matter of fact, was accorded even greater rights than those to which he was legally entitled. Thus he was accorded due process. Furthermore, on the basis of the record there was no other decision which could properly be made by the Local Board and the Appeal Board than their decision that the appellant was entitled to no classification except Class I-A. Accordingly, instead of the actions of the Draft Board and the Appeal Board being arbitrary and capricious, they were fair and just, being based upon substantial evidence.

Thus the I-A Classification being valid, the Induction Order based thereon was likewise valid, and the refusal to submit to induction by the appellant constituted a wilful violation of the Selective Service Act of 1948.

The evidence, therefore, was more than sufficient to justify the conviction of the appellant.

CONCLUSION.

In view of the foregoing, it is respectfully urged that the judgment of conviction was correct and should be affirmed.

Dated, San Francisco, California,
May 9, 1951.

FRANK J. HENNESSY,
United States Attorney,
JOSEPH KARESH,
Assistant United States Attorney,
Attorneys for Appellee.

(Appendix Follows.)

Appendix.

Appendix

I.

SELECTIVE SERVICE REGULATIONS.

"CLASS IV-D: MINISTER OF RELIGION OR DIVINITY STUDENT.—(a) In Class IV-D shall be placed any registrant:

(1) Who is a regular minister of religion;

(2) Who is a duly ordained minister of religion;

(3) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(4) Who is a student preparing for the ministry under the direction of a recognized church or religious organization and who is satisfactorily pursuing a full-time course of instruction leading to entrance into a recognized theological or divinity school in which he has been pre-enrolled.

(b) Section 16 of title I of the Selective Service Act of 1948 contains in part the following provisions:

> 'SEC. 16. When used in this title— * * *
> (g) (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of

a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term "regular minister of religion" means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.' "

"OPPORTUNITY TO APPEAR IN PERSON.—(a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (SSS Form No. 110) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control.

* * * * * * *

(c) If the written request of the registrant to appear in person is filed after such 10-day period and the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control, the local board shall enter in the 'Minutes of Actions by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the date on which the request was received and the date and the time fixed for the registrant to appear and shall promptly mail to the registrant a notice of the time and place fixed for such appearance.

(d) If such a written request of a registrant for an opportunity to appear in person is received after the 10-day period following the mailing of a Notice of Classification (SSS Form No. 110) to the regis-

trant, the local board, unless it specifically finds that the registrant was unable to file such a request within such period because of circumstances over which he had no control, shall advise the registrant, by letter, that the time in which he is permitted to file such a request has expired, and a copy of such letter shall be placed in the registrant's file. Under such circumstances, no other record of the disposition of the registrant's request need be made."

Part 624.1.

"CLASSIFICATION NOT PERMANENT.—(a) No classification is permanent.

(b) Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, or dependency status, or in his physical condition. Any other person should, within 10 days after knowledge thereof, report to the local board in writing any such fact.

(c) * * *."

Part 625.1.

"WHEN REGISTRANT'S CLASSIFICATION MAY BE REOPENED AND CONSIDERED ANEW.—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 25), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

Part 625.2.

"WHEN REGISTRANT'S CLASSIFICATION SHALL BE REOPENED AND CONSIDERED ANEW.—The local board shall reopen and consider anew the classification of a registrant upon the written

request of the State Director of Selective Service or the Director of Selective Service and upon receipt of such request shall immediately cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant."

Part 625.3.

"REFUSAL TO REOPEN AND CONSIDER ANEW REGISTRANT'S CLASSIFICATION.—When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required."

Part 625.4.

"APPEAL BY DIRECTOR AND STATE DIRECTOR.—(a) Either the Director of Selective Service or the State Director of Selective Service as to local boards in his State may appeal from any determination of a local board.

(b) Either the State Director of Selective Service or the Director of Selective Service may take such an appeal at any time."

Part 1626.1.

"APPEAL BY REGISTRANT AND OTHERS.—(a) The registrant, any person who claims to be a dependent of the registrant, any person who prior to the classification appealed from filed a written request for the current occupational deferment of the registrant, or the government appeal agent may appeal to an appeal board from any classification of a registrant by the local board except that no such person may appeal from the determination of the registrant's physical or mental condition.

(b) The government appeal agent may take any appeal authorized under paragraph (a) of this section at any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (SSS Form No. 110) or at any time before the registrant is mailed an Order to Report for Induction (SSS Form No. 252).

(c) The registrant, any person who claims to be a dependent of the registrant, or any person who prior to the classification appealed from filed a written re-

quest for the current occupational deferment of the registrant, may take an appeal authorized under paragraph (a) of this section at any time within the following periods:

(1) Within 10 days after the date the local board mails to the registrant a Notice of Classification (SSS Form No. 110).

(2) * * *."

Part 1626.2.

"HOW APPEAL TO APPEAL BOARD IS TAKEN.—(a) Any person entitled to do so may appeal to the appeal board by filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the name and identity of the person appealing so as to show the right of appeal. The language of any such notice shall be liberally construed in favor of the person filing the notice so as to permit the appeal.

(b) The local board shall enter on the Classification Questionnaire (SSS Form No. 100), under the heading 'Minutes of Action by Local Board and Appeal Board', the date on which an appeal is filed."

Part 1626.11.

"STATEMENT OF PERSON APPEALING.—The person appealing may attach to his appeal a statement specifying the matters in which he believes the

local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or to give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file."

Part 1626.12.

II.

Letter from State Headquarters of Selective Service to Local Board No. 58:

"Subject: Thomas Henry Burgtorf.

Gentlemen:

This supplements our conversation today with Mrs. Anderson regarding the above-named registrant, who refused to be inducted at San Francisco.

As stated in our conversation, Mr. Karesh, the Assistant United States Attorney at San Francisco, telephoned us this morning stating that the registrant represents that he failed to receive his classification notice and that when he did report at the Board, the time for appeal had passed and that the Board would not extend the time.

Mr. Karesh was apprehensive that the case would be prejudiced by reason of the fact that the appeal had been disallowed and suggested that this headquarters discuss with the Board the question whether

the Board would be agreeable to permitting an appeal to be taken by the registrant at this time.

The matter was discussed with Mrs. Anderson and on the basis of our conversation with her, we notified Mr. Karesh that the appeal would be granted.

As suggested to Mrs. Anderson, we believe it would be advisable for the Board to write the registrant a letter telling him that the appeal had been granted and that he will have five days from the date of the letter in which to file any additional matter he wishes in his cover sheet to be considered by the Appeal Board. The suggestion in respect to the filing was made with the thought in mind that if the case subsequently reaches the prosecution stage, the registrant will not be able to say that the Board permitted him to take an appeal but would not allow him to make any further filings.

Mr. Karesh suggests that the registrant should not be carried on the Delinquent Report or reported to him as a delinquent.

For the purpose of satisfying the regulations since the registrant has been ordered to report for induction, this headquarters is agreeable to the appeal being taken.

The willingness of the Board to assist in the solution of the problem is appreciated.

FOR THE STATE DIRECTOR CHARLES F. GOING, COLONEL, JAGD, Deputy State Director."